

Department of the Treasury
Director, Exempt Organizations

2 Cupania Circle
Monterey Park, CA 91755-7431
[REDACTED]

Internal Revenue Service
Pacific Coast Area (TE/GE)

Date: JUL 23 2000

Employer Identification Number:
[REDACTED]

Case Number:
[REDACTED]

Person to Contact:
[REDACTED]

Telephone Number:
[REDACTED]

Fax Number:
[REDACTED]

CERTIFIED MAIL.

Dear Applicant:

We have considered your application for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code.

The information submitted discloses that you were incorporated in [REDACTED]. It was organized for purposes under [REDACTED]. The specific purposes of your organization per your Articles of Incorporation are "To assist in all community efforts to enhance the striped bass fishery in [REDACTED]. The corporation will collect all available scientific, environmental, financial, and other information on the fishery and disseminate said information to the general public. The corporation will raise money through grants and direct requests from the general public and spend all funds on striped bass enhancements in [REDACTED]."

You requested tax exemption as a non-private foundation organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Internal Revenue Code.

The primary purpose of your organization according to your application, Form 1023, is the acquisition of fingerling striped bass from commercial fish farms and depositing the fish at [REDACTED]. [REDACTED] provides free transportation. The stocking of these fish will increase the public recreational use of the lake, which averages [REDACTED] visitor days a year. [REDACTED] % of the visitors who fish targeted striped bass.

The second activity of the organization is the education of the public at [REDACTED] striped bass fishery. The organization will gather all available scientific and environmental information related to

[REDACTED]

the fishery. The organization will disseminate information through free seminars to any members of the public focusing on fishing techniques, habitat maintenance, and enhancement.

The long term advantage of increasing the striped bass population is the reduction of a non-game, non-native predatory trash fish, called the [REDACTED] and commonly referred to as a [REDACTED]. The organization will participate in all local efforts to eradicate this lake destroying fish.

The organization will seek grant funding from the local Fish and Game Department to support its enhancement goals. The organization will seek funds from local businesses and corporations. Also, the organization will solicit public donations through the posting of handbills at the lake and all fisheries related businesses.

FACTS:

The organization was established by the [REDACTED] a non-exempt membership organization. The purpose of the formation of the organization is to take advantage of private grants and public monies with a non-profit status.

The grants provided by the Fish and Game Commission were given to [REDACTED] prior to the formation of the organization.

During the past [REDACTED] years, the [REDACTED] through its members and solicitation from businesses and other organizations, purchased and stocked 12,500 striped bass in the lake. It takes several years for the striped bass to grow large enough (at least 18 inches) when they may be caught and kept.

The organization, since its formation on [REDACTED] has not or has been unable to provide documentation in regards to educating and informing the general public on the fishery, habitat maintenance, environmental conditions of the ecosystem of the lake, fishing techniques, etc. The organization has not explained what benefits the public will receive by increasing the population of the striped bass. Also, the organization has not explained if the lake is in distress from environmental deterioration, pollution, lack of conservation, or too many visitors, but rather only enhancing the recreational use of the lake for fishing.

[REDACTED]

Each fiscal year the budget of estimated expenses is geared toward buying and stocking the lake with striped bass.

ISSUE:

Does the organization qualify for exemption as an organization described in section 501(c)(3) of the Internal Revenue Code?

LAW:

Section 501(c)(3) of the Internal Revenue Code describes certain organizations exempt from income tax under section 501(a) and reads in part as follows:

"(3) Corporations, and any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distribution of statement), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such sections. If any organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization (a) limit the purposes of such organization to one or more exempt purposes; and (b) do not expressly empower the organization to engage otherwise than an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or

more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(11) of the Regulations states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements, an organization must establish that it is not organized or operated for the benefit of private interest, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

The Supreme Court stated in Better Business Bureau v. United States, 326 U.S. 279, 66 S. CT. 112, 90 L. ED. 67 "...the presence of a single [non charitable] purpose, if substantial in nature, will destroy the exemption regardless of the number of importance of truly (charitable) purposes."

See Church of Boston V. Commissioner, (1978) 71 T.C. 102; Colorado State Chiropractic Society, (1989) 93 T.C. 487; Best Lock Corporation, (1959) 31 T.C. 1217; St. Louis Science Fiction Limited v. Commissioner, T.C. Memo 1985-162 and Minnesota Kingsmen Chess Association Inc. v. Commissioner, T.C. Memo 1983-495; all of these court cases hold that the presence of a single non-exempt purpose and a substantial non-501(c)(3) activity results in loss of exemption despite the presence of other exempt purposes.

Revenue Procedure 84-46, CB 1984-1 541, section 5, which reads in part, as follows:

12. Exempt status will be recognized in advance of operations - proposed operations can be described in sufficient detail to permit a conclu. on that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully described the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activities; the anticipated sources of receipts; and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will

be exempt, a record of actual operations may be required before a ruling or determination letter will be issued. In those cases where an organization is unable to describe fully its purposes and activities, a refusal to issue a ruling or determination letter will be considered an initial adverse determination from which administrative appeal or protest rights will be afforded."

ANALYSIS:

All of the preceding Code sections, Regulation sections, Revenue Procedures and court cases describe the criteria under which an organization may be exempt under section 501(c)(3) of the Internal Revenue Code. They also describe the basis for which organizations were denied exemption because they were not organized and operated exclusively for section 501(c)(3) purposes.

Under section 501(c)(3) of the Code, organizations who are not operated exclusively for one of the specified purposes of section 501(c)(3) or organizations whose sole purpose is providing private benefit to its members or individuals is not exempt under section 501(c)(3) of the Code. Your organization's activities are not exclusively educational or charitable. There are indications of private benefit for a few individuals. It appears that the organization's activity is to increase the public recreational use of the lake by stocking it with striped bass and eradicating a non-game, non-native predatory trash fish.

You have not provided any means or methods of involving or informing the public about the striped bass fishery, ecosystem of the lake, gathering and disseminating of scientific and environmental data, or scheduling of public forums.

Thus far, your activities appear to be private interests and more than just incidental activities. You did not operate for any of the specified exempt purposes. The organization did not meet the requirements as described under section 501(c)(3) of the Code.

CONCLUSION:

To be considered for tax exempt status under section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in that section. Also, its

[REDACTED]

activities must be restricted to those permitted a section 501(c)(3) organization.

It is the position of the Internal Revenue Service, based on the information submitted, that you are not entitled to exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code, as you are not organized and operated exclusively for any of the specified purposes within that section. You are both organized and operated exclusively for the private benefit of a few individuals.

If you are in agreement with this proposed determination, we request that you sign and return the enclosed agreement Form 6018. Please note the instructions for signing on the reverse side of the form.

If you disagree with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information to support your position, as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a hearing. The hearing may be held at the office of Regional Director of Appeals or, if you request, at a mutually convenient District Office. A self-addressed envelope is enclosed.

If we do not hear from you within 30 days from the date of this letter, and you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies and will then become our final determination. If this letter becomes our final determination, the appropriate state officials of the State of California will notified in accordance with section 6104(c) of the Code

Section 7428(b)(2) of the Internal Revenue Code provides in part that "declaratory judgement of decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If you have any questions, please contact the person whose name and telephone number is shown in the heading of this letter.

Sincerely your,

Steven T. Miller

Steven T. Miller
Director, Exempt Organization

Enclosures:
Form 6018
Publication 892
Notice 1214
envelope